in accordance with the statutory requirement where an appeal was desired. This the reporter failed and neglected to do, and the defendant, being thus deprived of his right to appeal through no fault or negligence of his own, sought the relief of equity. The court, in a well considered opinion, refused the relief on the ground that there was no claim made that the defendant did not have a fair and impartial trial, and no facts alleged tending in the least to show that the verdict of the jury was not the result of a fair and impartial deliberation upon the evidence submitted. In other words, there was nothing offered to show that the judgment entered in the lower court was either unjust or inequitable, or that the result would be different from that already reached, in the event that a new trial were granted. There was no concurrence of both the accident complained of and the injustice of the judgment. The complainant had not fulfilled his burden of showing that there was something inherently wrong in the judgment.

The position taken by the court is in accord with the well settled rule enunciated by a long line of decisions, that where a judgment is regular on its face, one who seeks to set it aside or enjoin its collection must set forth a meritorious defense to the original action.[14] And it is also in accord with the fundamental principle of equity, that a party seeking its aid must show some substantial injury. The fraud or accident is, in such cases, a mere technical wrong, and the aid of equity will not be invoked unless in addition to the mere technical wrong, a meritorious defense is shown so that on re-examination and re-trial of the case the result would be different.

P. H. R.

MASTER AND SERVANT—AUTOMOBILES—LIABILITY TO THIRD PERSONS—"COURSE OR SCOPE OF EMPLOYMENT OR AUTHORITY"—The general use of the automobile has led to a constantly increasing volume of litigation on causes of action arising out of its use. Not the least interesting and important class of cases so developed is that dealing with the owner's liability to persons injured by the negligent use of motor vehicles by persons other than the owner.

Two recent cases decided by the Supreme Court of Michigan[1] furnish excellent examples of this class. In *Brinkman* v. *Zucker-*

[14] Brandt v. Little, 47 Wash. 194 (1907), 14 L. R. A. (N. S.) 213; Reed v. N. Y. Nat. Bank, 230 Ill. 50 (1907); Bernhard v. Idaho Bank, 21 Idaho 598 (1912). This rule is universal as to judgments obtained merely by fraud or accident. In cases where the ground of attack on the judgment is want of jurisdiction, as where there is no service of summons, there is some conflict of authority; but the prevailing view is that even there a good defense on the merits must be shown before equity will grant relief. Needle v. Biddle, 32 R. I. 342 (1911); 6 Pomeroy's Eq. Jur., Sec. 667.

man, the chauffeur drove his owner to a certain place at eight o'clock in the evening, and was given instructions to return for his master at twelve. The chauffeur thereupon drove to his father's residence, a journey of some three miles, remained there for several hours, and left about a quarter of twelve to keep the appointment with his employer. On the way in, he picked up three men as passengers and while driving them to their destination, a little off the direct route into town, the accident happened. The court held that the owner was under no liability, as the servant was at the time acting for his own benefit and not in the master's business, hence was not acting within the course or scope of his employment or authority.

Johnston v. *Cornelius* presents a slightly different problem, but one which depends for its solution on the same basic principle. Here the owner of the car was the father of the driver, a minor, and not a licensed chauffeur. The boy had been in the habit of driving the machine when his father or mother were in it, and even alone for his own pleasure, but never without the supervision, consent or direction of one of his parents, and in fact had positive instructions not to use it except under those conditions. On the night of the accident the parents had gone out, and, violating instructions, the boy obtained the car and went for a ride with a young woman acquaintance. When returning home the accident happened. The court held that the father was not liable, for at the time the boy was not acting as the servant or agent of the owner, nor did the parental relation, as such, create the relation of master and servant.

These cases illustrate the application of the general rule that to hold the owner liable there must be not only the relation of master and servant between the owner and driver, but he must also act within the scope of his employment as servant.[2] The automobile is universally accepted as not being of itself a dangerous instrumentality, so the law affecting the liability of the owner of a dangerous instrument in the charge of another does not apply.[3] And, as stated in *Johnston* v. *Cornelius,* the mere fact of family relationship between the owner and driver does not establish the owner's responsibility. There, as in other cases, the relation of master and

[1] Brinkman v. Zuckerman, 159 N. W. 316 (Mich. 1916); Johnston v. Cornelius, 159 N. W. 318 (Mich. 1916).

[2] There must be relation of master and servant before any liability may even be presumed: Denison v. McNorton, 228 Fed. 401 (1916); Hartley v. Miller, 165 Mich. 115 (1911); Sarver v. Mitchell, 35 Pa. Super. Ct. 69 (1907); Doran v. Thomsen, 76 N. J. L. 754 (1908). The driver must be within the scope of his employment: Coal Co. v. Rivoux, 88 Ohio St. 18 (1913); Hartley v. Miller, *supra;* Lotz v. Hanlon, 217 Pa. 339 (1907); Neff v. Brandeis, 91 Neb. 11 (1912).

[3] Danforth v. Fisher, 75 N. H. 111 (1908); Jones v. Hoge, 47 Wash. 663 (1907); Cunningham v. Castle, 127 App. Div. 580 (N. Y. 1908); Indiana Springs Co. v. Brown, 165 Ind. 465 (1905).

servant or principal and agent must be shown.[4] Very often, in such cases the determination of the relation is difficult. Many cars are bought for the pleasure and use of the whole family. But it is settled that the family relationship itself is not enough. There must be authority given by the owner, either expressly or impliedly, or the act must be done for his benefit or under his direction. The fact that the owner may not receive the benefit directly in such cases does not destroy the principle nor make it any the less the use in the owner's business.[5]

The phrase "source or scope of the employment or authority," when used relative to the acts of a servant means in the service of his master or while about his master's business.[6] This principle is easily stated but its application to varying sets of facts is most difficult and has resulted in confusion and apparent conflict in the cases, especially so in the automobile cases; hence a determination in any particular case must serve as a guide rather than a positive rule of law. A number of cases illustrative of varying circumstances and the application to them of the "scope of employment" rule, are appended.[7]

T. L. H.

NEGLIGENCE—VIOLATION OF SPEED LAW—NEGLIGENCE PER SE—The question of the evidential value of proving the violation of a "speed law," in establishing the fact of negligence in the conduct of a defendant, is simply a branch of the larger problem of the extent to which proof of violations of any statute or ordinance may be introduced as evidence of negligence. There are many conflicting opinions upon this subject, and the decisions, in many

[4] Parker v. Wilson, 60 So. 150 (Ala. 1912); Reynolds v. Buck, 127 Iowa 601 (1905); Schumer v. Register, 12 Ga. App. 743 (1913); Loehr v. Abell, 174 Mich. 590 (1913); Linville v. Nissen, 162 N. C. 95 (1913); Maher v. Benedict, 123 App. Div. 579 (N. Y. 1908).

[5] Stowe v. Morris, 147 Ky. 386 (1912); Marshall v. Taylor, 168 Mo. App. 240 (1913); Birch v. Abercrombie, 74 Wash. 486 (1913).

[6] Riley v. Roach, 168 Mich. 294 (1912).

[7] Owner not liable where chauffeur took the car to go to dinner, Steffen v. McNaughton, 142 Wis. 49 (1910); where chauffeur went out on owner's business, but went some distance out of the way to deliver a note for another party, Northup v. Robinson, 33 R. I. 496 (1912); where chauffeur took a six-mile trip for his own purposes, Fleishner v. Durgin, 207 Mass. 435 (1911); chauffeur entertaining his friends, Symington v. Sipes, 88 Atl. 134 (Md. 1913). The owner is not liable "Where the servant or chauffeur, although originally taking the vehicle out for the owner's use, deviates from his owner's business and goes upon some independent journey for his own or another's pleasure or benefit." 28 Cyc. 39, and see Provo v. Conrad, 149 N. W. 753 (Minn. 1915), anotated in 64 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 102; Blaker v. Phila. Elec. Co., 60 Pa. Super. Ct. 56 (1915), annotated in 64 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 210; and cases cited therein.